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Attorney for Plaintiff

Michael Grecco Productions, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MICHAEL GRECCO
PRODUCTIONS, INC.,

Plaintiff,

v.

TIKTOK, INC.,

Defendant.

Civil Action No. 2:24-cv-04837-FLA-
MAR

**PLAINTIFF'S REPLY IN
SUPPORT OF ITS MOTION FOR
EXTENSION OF DEADLINES**

(OPPOSED)

DATE: Friday, May 16, 2025

TIME: 10:30 a.m.

JUDGE: Fernando L. Aenlle-Rocha

Plaintiff¹ hereby files this reply memorandum in further support of its
Motion to Extend Deadlines [D.E. 56], and states as follows:

¹ Terms not defined herein shall have the meaning ascribed to them in the Motion.

INTRODUCTION

Defendant spends much of its opposition to the Motion criticizing Plaintiff and painting half pictures to this Court. For reasons unknown to Plaintiff, Defendant is vehemently opposed to a Motion that would benefit it. Should the Court graciously grant an extension of time to complete fact discovery not only would it allow Plaintiff and Defendant to take the depositions they seek, but also it would not prejudice Defendant. Because extending the discovery cut-off deadline would benefit both parties and aid in the overall prosecution and defense of this matter, the Court should grant Plaintiff's Motion.

ARGUMENT

I. Applicable Law

“When a party moves for modification of the scheduling order before the final pretrial conference, the scheduling order ‘may be modified only for good cause and with the judge’s consent.’” Multicraft Imps., Inc. v. Mariposa United States, Inc., No. CV 16-3975 DMG (AJWx), 2017 U.S. Dist. LEXIS 186333, at *4 (C.D. Cal. June 8, 2017) (quoting Fed. R. Civ. P. 16(b)(4)). “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking the amendment. The district court may modify the pretrial schedule ‘if it cannot

1 reasonably be met despite the diligence of the party seeking the extension.’
2 Fed.R.Civ.P. 16 advisory committee’s notes (1983 amendment).” Johnson v.
3 Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). Where the party
4 seeking to modify the scheduling order “was not diligent, the inquiry should end.”
5
6 Id.

8 **II. Plaintiff’s Due Diligence**

9 Defendant takes issue with the fact that the request for extension of time
10 occurred in the “Eleventh Hour” only two days before the discovery cut-off.
11 However, a presumptive lack of due diligence would not be appropriate here, as
12 the deadlines that Plaintiff wishes to extend have not yet passed.
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15 Plaintiff first filed its Motion for Extension of Time to Extend Discovery
16 Cut-Off Dates on May 5, 2025. An error in the proposed order caused the document
17 to be stricken [D.E. 50, 52, and 54]. While a mistake is not an excuse, and
18 undersigned counsel takes responsibility for the error, Defendant is on the
19 CM/ECF service list and was certainly aware of this motion prior to the “Eleventh
20 Hour.” Moreover, Plaintiff first broached the idea of extending the discovery
21 deadline with Defendant on April 21, 2025. Defendant initially opposed.
22 Defendant then served last-minute deposition notices whereby Plaintiff and/or
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1 counsel was unavailable. As such, Plaintiff again asked Defendant if it would like
2 to reconsider requesting an extension of time from the Court for discovery cut-off
3 so that Defendant would be able to take its depositions. Plaintiff made this inquiry
4 with Defendant on May 2, 2025. As Local Rule 7-3 requires counsel to meet and
5 confer, Plaintiff could not file its Motion, until it heard from Defendant's counsel.
6 Defendant's counsel did not respond until May 5, 2025. Plaintiff filed its intended
7 Motion – that Defendant was aware was coming – as soon as it could without
8 compromising complying with a required local rule.
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12 Defendant attempts to accuse Plaintiff of sitting on its hands and doing
13 nothing in furtherance of this matter. Without regurgitating the procedural history
14 laid out in the Motion, the disposition of this case was unknown from August 15,
15 2024 (the date Defendant filed its Motion to Dismiss)² until March 12, 2025 (the
16 date the Court granted Defendant's Motion to Dismiss and allowed Plaintiff leave
17 to file a Second Amended Complaint).³ The case was in a holding pattern for seven
18 months.
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25 ² See D.E. 24

³ See D.E. 45.

1 **III. The Work That Needed to be Performed Required Defendant's**
2 **Answer**

3 To show good cause for a continuance, a party must provide specific,
4 detailed, and non-conclusory reasons for granting the extension, including a
5 showing of diligence in pursuing the litigation. See Torres v. Bos. Sci. Corp., No.
6 2:19-cv-09739-SB-AS, 2020 U.S. Dist. LEXIS 232725, at *1 (C.D. Cal. Dec. 7,
7 2020); Fed. R. Civ. P. 16(b).

8
9 As stated in the Motion, Plaintiff needed Defendant's Answer to adequately
10 execute *all* discovery. Defendant's Answer to Plaintiff's Second Amended
11 Complaint was not filed until April 29, 2025. Defendant's Answer could have been
12 filed sooner, which would have given Plaintiff a bit more time to engage in
13 discovery, however, Plaintiff agreed to an extension of time for Defendant to file
14 its Answer as a professional courtesy.

15 Notably, in one case out of the Central District of California, the court noted
16 that "to the extent this continuance [extension of non-expert discovery deadlines]
17 interferes with other deadlines, the Parties are encouraged to cooperate on
18 stipulations to modify the scheduling order." See Master Pipe Distribution Co. v.
19 KB Ins. Co. Ltd., No. 2:23-cv-02745-AB (AGRx), 2025 U.S. Dist. LEXIS 81791,
20 *n.1 (C.D. Cal. Mar. 11, 2025).

1 Notwithstanding the specific reason Plaintiff did provide for requesting a
2 continuance, the Court is well within its purview to grant continuance regardless.

3
4 The Parties cite three reasons for the requested
5 continuance: (1) Plaintiff's counsel has been busy with a
6 trial, (2) the COVID-19 pandemic has created delays, and
7 (3) there is a genuine discovery dispute regarding
8 confidential testimony. Stipulation at 3-4. **However, the**
9 **Parties fail to explain why these issues could not have**
10 **been anticipated earlier or why they only sought a**
11 **continuance with less than a week remaining before the**
12 **discovery cut-off. Good cause is not apparent.**

13
14 **Nevertheless, the Court shall grant a modified**
15 **extension with an admonition that the parties should**
16 **not expect any further continuance of any (existing or**
17 **future) deadline.**

18
19 Torres v. Bos. Sci. Corp., No. 2:19-cv-09739-SB-AS, 2020 U.S. Dist.
20 LEXIS 232725, at *2 (C.D. Cal. Dec. 7, 2020) (emphasis added).

21
22 Defendant states in its opposition that, "Defendant has noticed the
23 deposition of Plaintiff and two of Plaintiff's representatives. Keyes Decl. ¶ 7.
24 However, Plaintiff has not noticed any depositions. Id. ¶ 5. While Plaintiff claims
25 "scheduling conflicts" are now preventing depositions, it fails to provide any
explanation of what those conflicts are, why they have suddenly appeared, or why
Plaintiff cannot meet discovery deadlines that have been established for months."
What Defendant fails to disclose to the Court is that Defendant noticed depositions
on six-days, seven-days, and eight-days notice – and one of the notices was

1 improper to serve on counsel as it should have been a subpoena. The eight calendar
2 days (at best) were insufficient time to ensure availability for both counsel and
3 deponent.
4

5 Defendant's contention that Plaintiff should have assumed it would file an
6 identical answer in this case as it did in *Waterman v. TikTok, Inc.*, No. 2:24-cv-
7 04802-SRM-AJR is, in a word, *perplexing*. While the cases certainly share
8 similarities, Plaintiff would hope that Defendant can appreciate every case that is
9 filed is different. If the *Waterman* case and the case at bar were identical,
10 Defendant's Notice of Related Cases would have been granted in *Waterman* in
11 August 2024; however, the Honorable André Birotte Jr. declined TikTok's transfer
12 request for the following reasons: "involve different plaintiffs, works, and
13 evidence." See *Waterman*, D.E. 21. Judge Birotte has recognized that the two cases
14 would require different evidence, and Defendant (who shares the same counsel in
15 both cases) should too.
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21 **IV. Counsel's Detailed Declaration**

22 Undersigned counsel apologizes for not including a detailed declaration with
23 the Motion. While the detailed declaration should have been submitted therewith,
24 undersigned counsel now provides such detailed declaration with this Reply.
25

1 **V. Defendant Would Not Be Prejudiced**

2 “Although the existence or degree of prejudice to the party opposing the
3 modification might supply additional reasons to deny a motion, the focus of the
4 inquiry is upon the moving party’s reasons for seeking modification.” Landes v.
5 Skil Power Tools, No. 2:12-cv-01252-MCE, 2013 U.S. Dist. LEXIS 181426, 2013
6 WL 6859837, at *3 (E.D. Cal. Dec. 30, 2013). Plaintiff’s reason for seeking
7 modification is so that ***both*** parties can complete discovery.

8 Regardless of how many ways Defendant and its counsel choose to chastise
9 Plaintiff and its counsel, the fact remains that neither side had the opportunity to
10 take ***any*** depositions. Defendant’s counsel consistently glosses over the fact that
11 its deposition requests were made with insufficient notice and/or improperly.
12 Plaintiff opted not to follow in Defendant’s footsteps and serve a 30(b)(6)
13 deposition notice with insufficient time merely for the sake of having said it was
14 done.

15 This Circuit has pointed to four factors for the Court to consider when
16 determining if a scheduling order should be modified: (1) the degree of prejudice
17 to the moving party from a failure to modify; (2) the degree of prejudice to the
18 nonmoving party from a modification; (3) the impact of a modification at that stage
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1 of the litigation on the orderly and efficient conduct of the case; and (4) the degree
2 of willfulness, bad faith or inexcusable neglect on the part of the moving party. See
3 United States v. First Nat. Bank of Circle, 652 F.2d 882, 887 (9th Cir. 1981).
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5 *A. The Degree of Prejudice to the Moving Party*

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7 The degree of prejudice to the moving party from a failure to modify is
8 significant. As Defendant points out in its Opposition, Plaintiff has been very clear
9 since the 26(f) conference that it would need at least one deposition. Plaintiff
10 should have been able to take Defendant's deposition and inquire about its eighteen
11 (18) affirmative defenses, which was not possible until 10 days before the
12 discovery cut-off, which did not leave sufficient time to get depositions scheduled
13 between counsel, deponents or court reporters.
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16 *B. The Degree of Prejudice to the Nonmoving Party*

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18 Defendant would not be prejudiced by a modification. The parties are not on
19 the eve of trial; the discovery period has not yet closed; and, Defendant would also
20 have the opportunity to take the depositions it clearly wanted to (as evidenced by
21 the three notices it served); notably, Defendant's counsel emailed Plaintiff's
22 counsel May 8, 2025—*the same day of the filing of this reply and less than 24*
23 *hours after Defendant filed its opposition to the extension of time*—inquiring
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1 when Ms. Yamada would be made available; adding that if Ms. Yamada could not
2 be made available, that counsel must provide a detailed explanation as to why.
3 Defendant is aware of the cut-off being tomorrow, and that counsel is unavailable.
4 Defendant's insistence on depositions indicates that it would not be prejudiced by
5 an extension of time for discovery cut-off, but in fact would benefit Defendant.
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8 *C. The Impact of Modification at this Stage of Litigation*

9 The impact of modifying the scheduling order at this stage of litigation
10 would not be detrimental to the orderly and efficient conduct of the case. The
11 parties still have a significant amount of time left in the matter. The parties have
12 not done dispositive motions yet, nor has mediation occurred. In one case, the court
13 noted that "[a]lthough the Court shares Plaintiffs' interest in the expeditious
14 resolution of this matter, the Court is not persuaded that a six-month extension
15 would cause such undue prejudice." Ronduen v. GEO Grp., Inc., No. EDCV 23-
16 0481 JGB (SHKx), 2024 U.S. Dist. LEXIS 212999, at *n.2 (C.D. Cal. Aug. 26,
17 2024).
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22 *D. The Degree of Willfulness, Bad Faith or Inexcusable Neglect on the Part*
23 *of the Moving Party*
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1 Lastly, Plaintiff does not request the extension of time in bad faith. As can
2 be seen from the docket, it took more than ten months to have both parties' initial
3 pleadings on the record.
4

5 Though it is unclear why Defendant is so steadfast in its opposition to a
6 Motion that would also assist Defendant in completing discovery, Defendant
7 would not be prejudiced by the Court granting Plaintiff's Motion.
8

9 Accordingly, Plaintiff respectfully requests that the Court grant its Motion
10 to Extend the Discovery Cut-Off Date.
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14 Dated: May 8, 2025.

COPYCAT LEGAL PLLC

15 By: /s/ Lauren M. Hausman
16 Lauren M. Hausman, Esq.
17 Jonathan Alejandrino, Esq. (*pro hac vice*)
18 Attorneys for Plaintiff
19 Michael Grecco Productions, Inc.

20 **CERTIFICATE OF SERVICE**

21 I hereby certify that on May 8, 2025, I electronically filed the foregoing
22 document with the Clerk of the Court using CM/ECF, which will electronically
23 serve all counsel of record.

24 /s/ Lauren M. Hausman
25 Lauren M. Hausman, Esq.